

Control Number: 28821



Item Number: 698

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DOCKET NO. 28821

ARBITRATION OF NON-COSTING	§	PUBLIC UTILITY COMMISSION
ISSUES FOR SUCCESSOR	§	
INTERCONNECTION AGREEMENTS	§	OF TEXAS
TO THE TEXAS 271 AGREEMENT	§	

ORDER ON CLARIFICATION AND RECONSIDERATION

This Order grants, in part, and denies, in part, the motions for clarification and/or reconsideration filed by: CLEC Joint Petitioners;¹ AT&T Communications of Texas, LP, TCG Dallas, and Teleport Communications Houston, Inc. (collectively referred to as AT&T); Birch Telecom of Texas, Ltd., LLP and ionex Communications South, Inc. (Birch-ionex); CLEC Coalition;² and Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC Texas). The Commission grants the motions for clarification and reconsideration to the extent specified in the following discussions of the decision point list (DPL) issues. The Commission otherwise denies the motions for clarification and reconsideration.

CLEC Coalition Motion for Reconsideration

General Terms & Conditions DPL

SBC Texas Issue No. 27/CLEC Coalition Issue No. 17/CLEC Joint Petitioners Issue No. 6

The CLEC Coalition and CLEC Joint Petitioners requested that the Commission reconsider its decision to require payment within 30 days of the bill date. The Commission has extended the time to decide this issue and will address it at a later date.³

¹ CLEC Joint Petitioners consists of AccuTel of Texas, LP, BasicPhone, Inc., BroadLink Telecom, LLC, Capital 4 Outsourcing, Inc., Cutter Communications, Inc. d/b/a GCEC Technologies, Cypress Telecommunications, Inc., DPI Teleconnect, LLC, Express Telephone Services Inc., Extel Enterprises, Inc. d/b/a Extel, Connect Paging, Inc., d/b/a Get A Phone, Habla Comunicaciones, Inc., IQC, LLC, National Discount Telecom, LLC, Quick-Tel Communications, Inc., Rosebud Telephone, LLC, PhoneCo, LP, Smartcom Telephone, LLC, Tex-Link Communications, Inc., and WesTex Communications, LLC d/b/a WTX Communications.

² CLEC Coalition consists of AMA Communications, LLC d/b/a AMA*TechTel Communications, Cbeyond Communications of Texas, LP, ICG Telecom Group, Inc., KMC Telecom Holdings, Inc. on behalf of its certificated entities, KMC Telecom III, LLC, KMC Data, LLC and KMC Telcom V, Inc., d/b/a KMC Network Services, Inc., McLeodUSA Telecommunications Services, Inc., nii Communications Ltd., NTS Communications, Inc., Time Warner Telecom of Texas, LP, XO Texas, Inc., Xspedius Communications, Inc., and Z-Tel Communications, Inc., Carrera Communications, LP, Westel, Inc., OnFiber Communications, Inc., Yipes Enterprise Services, Inc., WebFire Communications, Inc.

³ See Order Granting Additional Time (Apr. 4, 2005).

**CLEC Coalition Motion for Reconsideration
General Terms & Conditions DPL
SBC Texas Issue No. 34/CLEC Coalition Issue No. 23**

The CLEC Coalition requested that the Commission not impose the “escrow and dispute” requirement or alternatively, require SBC Texas to include exceptions to the escrow requirement for those CLECs that pay promptly and have no history of questionable disputes. In the General Terms & Conditions (GT&C) DPL, SBC Texas stated in its position statement that:

SBC Texas has included in its escrow language the most recently accepted language between SBC Texas and AT&T. SBC Texas’ proposed language is a compromise developed by SBC Texas and AT&T to enable CLECs with legitimate disputes and a good payment history to avoid having to escrow disputed amounts. The language also protects SBC Texas by requiring CLECs with poor credit and a history of filing questionable disputes to escrow disputed amounts. Furthermore, SBC Texas is also offering language addressing situations where a material billing error has occurred. . . . SBC Texas’ compromise language is reasonable and should be adopted because it protects SBC Texas’ interests while at the same time protecting the interests of CLECs that have a good payment history and a history of filing legitimate disputes. CLECs that have a poor payment history or have a history of filing questionable disputes should be required to escrow amounts they are disputing.⁴

However, SBC Texas omitted the exceptions from its proposed contract language for CLEC Coalition 23. On the other hand, escrow exceptions already agreed to by SBC Texas and AT&T state as follows:

- 8.7 The Billed Party shall not be required to place Disputed Amounts in escrow, as required by Section 8.5, above, if the Billed Party does not have a proven history of late payments and has established a minimum of twelve consecutive (12) months good credit history with the Billing Party (prior to the date it notifies the Billing Party of its billing dispute); and either
- (i) the Billed Party has not filed more than three previous billing disputes within the twelve (12) months immediately preceding the date it notifies the Billing Party of its current billing dispute, which previous disputes were resolved in Billing Party’s favor, or,
 - (ii) if the bill containing the disputed charges is not the first bill for a particular service to the Billed Party, the Billed Party’s dispute

⁴ *Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement*, Docket No. 28821, Joint General Terms and Conditions DPL at 171 and 174 of 319 (Sept. 16, 2004).

does not involve 50% or more of the total amount of the previous bill out of the same billing system.⁵

Accordingly, given that SBC Texas proposed to use the same exception language accepted by AT&T, but appears to have inadvertently omitted such contract language from SBC Texas 34/CLEC Coalition 23, the Commission adopts the exception language from the SBC Texas-AT&T agreement for the present DPL issue to ensure consistency. SBC Texas shall incorporate such exceptions into the agreement with the CLEC Coalition.

**CLEC Coalition Motion for Reconsideration
General Terms & Conditions DPL
SBC Texas Issue No. 14/CLEC Coalition Issue No. 35**

The Commission denies the CLEC Coalition's motion for reconsideration on this issue. The CLEC Coalition had requested that the Commission require a 45-day notice similar to that provided to Birch. However, the Commission notes that the Commission's decision on GT&C: SBC Texas 4/Birch-ionex 2/CLEC Coalition 3 & 4 already applies to the CLEC Coalition (as indicated by the presence of the CLEC Coalition's issue numbers on the same DPL issue). In SBC Texas 4/Birch-ionex 2/CLEC Coalition 3 & 4, the Commission required SBC Texas to provide 45 days prior notice of any unilateral changes in policy, process, method, or procedure used to perform SBC Texas's obligations under the interconnection agreement (ICA) that would disrupt or modify operations, unless SBC Texas has no control over the change or discontinuance of the policy, process, procedure or method.⁶ Therefore, the Commission determines that the decision on SBC Texas 4/Birch-ionex 2/CLEC Coalition 3 & 4 resolves the concerns raised by the CLEC Coalition in its motion for reconsideration.

**CLEC Coalition Motion for Reconsideration
General Terms & Conditions DPL
SBC Texas Issue No. 11/CLEC Coalition Issue No. ITR 1/AT&T Issue No. 11**

The CLEC Coalition and AT&T requested that the Commission find that TELRIC rates apply to cross connects used for interconnection. After consideration of the parties' arguments and the Federal Communication Commission's (FCC's) rulings, the Commission now determines that SBC Texas should provide cross connects associated with entrance facilities used

⁵ https://clec.sbc.com/clec_documents/unrestr/interconnect/t2a/unrestr/t2ver/v1/00%20GTC%20VER1%20020505.doc

⁶ Arbitration Award-Track 1 Issues at 139 (Feb. 23, 2005).

for interconnection at TELRIC rates. While the *TRRO*⁷ made clear the FCC's finding of non-impairment with respect to "entrance facilities," the *TRRO* did not make a corresponding non-impairment finding for cross connects associated with entrance facilities used for interconnection purposes.⁸ Because the FCC has made no non-impairment finding for cross connects and existing ICAs contain TELRIC-based cross connect rates for entrance facilities, the Commission finds that SBC Texas shall continue to offer entrance facility-related cross connects at prescribed TELRIC rates.

**CLEC Coalition Motion for Reconsideration
Network Architecture/Interconnection DPL
SBC Texas Issue No. 22/Xspedius Issue No. 22**

The Commission has previously determined that an Out of Exchange (OE) Traffic issue did not need to be addressed in the ICA.⁹ In addition, SBC Texas itself stated that OE should be addressed in a separate agreement because Section 251(c)(2) does not apply to OE.¹⁰ However, the Commission inadvertently adopted proposed OE contract language as an appendix to the ICA.¹¹ Given that the Commission has already determined that OE should be addressed in a separate agreement, the Commission reconsiders its prior approval and declines to adopt SBC Texas's proposed OE language.

**CLEC Coalition Motion for Clarification
General Terms & Conditions DPL
SBC Texas Issue Nos. 13 & 16/CLEC Coalition Issue Nos. 35 & 30**

In deciding SBC Texas 13, the Commission included language from the Texas 271 Agreement (T2A) regarding tariff-change notification, but omitted such language from the related decision on SBC Texas 16. Accordingly, to make the Commission's decision in SBC Texas 16 consistent with its decision in SBC Texas 13, the Commission adopts the following notification language for SBC Texas 16:

⁷ *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-388 and CC Docket No. 01-388, Order on Remand, FCC 04-290 (Feb. 4, 2005) (*Triennial Review Remand Order* or *TRRO*).

⁸ *TRRO* at paras. 136-141.

⁹ Arbitration Award-Track 1 Issues at 198 (Feb. 23, 2005).

¹⁰ Joint Network Architecture/Interconnection DPL at 132 of 316 (Sept. 16, 2004).

¹¹ Arbitration Award-Track 1 Issues at 198 (Feb. 23, 2005).

35.4 SBC Texas will provide CLEC notice of any tariff or filing which concerns the subject matter of this Agreement at the time an Informational or Administrative Notice is transmitted to the Public Utility Commission of Texas which is filed within ninety (90) days (forty-five (45) days for price changes) of the expected effective date of the tariff or filing.

35.5 In the event that SBC Texas is required by any governmental authority to file a tariff or make another similar filing in connection with the performance of any action that would otherwise be governed by the Agreement, SBC Texas will provide CLEC notice of the same as set forth in Section 35.4 above.

In SBC Texas 13, the Commission included the following language:

2.3.5 If any tariff referred to in Section 2.3.4 becomes ineffective by operation of law, through deregulation or otherwise, the terms and conditions of such tariffs, as of the date on which the tariffs became ineffective, will be deemed incorporated if not inconsistent with this Agreement.

Upon further review, the Commission finds that this language conflicts with the change of law provision approved in the successor agreement.¹² Therefore, the Commission omits this language from SBC Texas 16 and deletes this provision from the approved language in SBC Texas 13.

**CLEC Joint Petitioners Motion for Reconsideration
Intercarrier Compensation DPL
SBC Texas Issue No. 50/CLEC Joint Petitioners Issue Nos. 4 & 5**

The Commission denies the CLEC Joint Petitioners' motion for reconsideration. The CLEC Joint Petitioners asserted that neither policy nor evidence supported the use of a +/- 5% traffic imbalance as the threshold for determining when bill-and-keep applies. The Commission notes that the calculation used in the T2A for determining a traffic balance threshold of 10% relied upon a denominator that consisted only of one party's traffic volume (see table below). The calculation adopted in Docket No. 28821 using a 5% threshold relies on a larger denominator composed of the total traffic exchanged between the parties. While the new 5% threshold is not identical to the previous 10% threshold, the actual difference between the two is *de minimis*. Under the 10% calculation, a carrier reaches the threshold when its traffic equals 111.1% of the other carrier's traffic. Under the 5% calculation, a carrier reaches the threshold when its traffic equals approximately 110.5% of the other carrier's traffic.

¹² Arbitration Award-Track 1 Issues at 150 (Feb. 23, 2005).

10% Calculation	5% Calculation
$\frac{x-y}{x} = 10\%$	$\frac{x-y}{x+y} = 5\%$
$x = 1.111 \times y$	$x = 1.105 \times y$

The Commission finds the revised approach to be a more reasonable calculation of the parties' traffic since the calculation accounts for both parties' traffic in the denominator as well as the numerator. Therefore, the Commission denies the CLEC Joint Petitioners' motion to reconsider the +/- 5% threshold.

**CLEC Joint Petitioners Motions for Clarification and Reconsideration
Intercarrier Compensation DPL
SBC Texas Issue No. 15/CLEC Joint Petitioners Issue No. 7**

The Commission clarifies that its decision in SBC Texas 34/Birch-ionex 5 does not apply to the CLEC Joint Petitioners. The CLEC Joint Petitioners requested clarification and reconsideration of the decision on Intercarrier Compensation DPL: SBC Texas 34/Birch-ionex 5 which the CLEC Joint Petitioners claimed conflicted with the Commission's decision in SBC Texas 15/CLEC Joint Petitioners 7. The Commission notes that its decision with respect to SBC Texas 34 does not apply to any intercarrier compensation agreements that CLEC Joint Petitioners and SBC Texas may have voluntarily negotiated and agreed to apart from the unresolved issues brought before the Commission in this arbitration. The Commission's decision and contract language in SBC Texas 34 resulted from a dispute between SBC Texas and Birch-ionex submitted to the Commission for resolution and therefore applies only to SBC Texas and Birch-ionex.

**Birch-ionex Motion for Clarification
Network Architecture/Interconnection DPL
SBC Texas Issue Nos. 6, 7 & 12**

SBC Texas agreed to apply the AT&T contract language to the Birch-ionex ICA as Birch-ionex had requested, thereby resolving this issue and making a Commission decision unnecessary.¹³

¹³ See SBC Texas letter (Mar. 28, 2005).

**Birch-ionex Motion for Clarification
Joint Space Licenses DPL
SBC Texas Issue No. 4/Birch-ionex Issue No. 4**

The decision matrix was inadvertently left blank on this issue. The Commission clarifies that it adopts SBC Texas's proposed language (as further addressed below in the discussion on AT&T's motion for reconsideration of SBC Texas 1 & 4).

**Birch-ionex Motion for Clarification
Collocation DPL
SBC Texas Issue No. 2**

The Commission grants Birch-ionex's motion. In the Award, the Commission directed parties to collaboratively develop a metering solution.¹⁴ Birch/ionex had requested to participate in this process. The Commission clarifies that Birch is allowed to participate in the collaborative process.

**AT&T Motion for Reconsideration
Joint Space Licenses DPL
SBC Texas Issue Nos. 1 & 4/AT&T Issue Nos. 1 & 4**

The Commission previously determined that SBC Texas 1/AT&T 1 was moot.¹⁵ In Docket No. 22315,¹⁶ an arbitration between AT&T and SBC Texas, the Commission adopted AT&T's proposed rates for space license agreements while finding that two-way trunks were the most efficient method of interconnection. Moreover, the Commission concurred with AT&T, and found that the obligation to pay for collocation should not be placed solely on the CLECs. AT&T provided evidence that existing one-way trunks would continue to be used and SBC Texas would need to use AT&T facilities under certain arrangements. AT&T's proposed rates are identical to the ones approved in Docket No. 22315; therefore, the Commission adopts AT&T's proposed rates since they are necessary and identical to those approved in Docket No. 22315.

¹⁴ Arbitration Award-Track 1 Issues at 259 (Feb. 23, 2005).

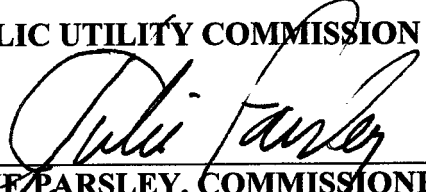
¹⁵ *Id.* at 254.

¹⁶ *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P. TCG Dallas, and Teleport Communications, Inc. Texas Pursuant to Section 252(B)(1) of the Federal Communications Act of 1996*, Docket No. 22315, Arbitration Award (Sept. 13, 2000).

The decision matrix was inadvertently left blank on SBC Texas 4/AT&T 4. The Commission addressed a very similar issue (compensated access) in Docket No. 23396.¹⁷ In that docket, the Commission declined to address the issue and determined that non-ILEC facilities on the multiple tenant environment (MTE) property owner's side of a single demarcation point constitute unregulated inside wire. The Commission reasoned that Sections 251 and 252 of the FTA do not require arbitration of rates, terms and conditions regarding access to such facilities. AT&T did not provide any information in its motion on which to determine if the third-party buildings at issue are analogous to those in Docket No. 23396. Furthermore, AT&T's assertion that SBC Texas is responsible for facilities all the way to the switch is unfounded because the Commission did not adopt AT&T's one-way trunking proposal. In contrast, SBC Texas's language appears reasonable when the building owner maintains a minimum point of entry. This type of arrangement is comparable to a mutually agreed point of interconnection (POI) in which each party is responsible for facilities on its side of the POI. Accordingly, the Commission adopts SBC Texas's language for SBC Texas 4/AT&T 4.

SIGNED AT AUSTIN, TEXAS the 11th day of May 2005.

PUBLIC UTILITY COMMISSION OF TEXAS


JULIE PARSLEY, COMMISSIONER


PAUL HUDSON, CHAIRMAN


BARRY T. SMITHERMAN, COMMISSIONER

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¹⁷ *Joint Petition of CoServ, L.L.C. d/b/a CoServ Communications and Multi Technology Services, L.P. d/b/a CoServ Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Southwestern Bell Telephone Company, Docket No. 23396, Arbitration Award at 15-32 (Apr. 17, 2001).*